

**MANAGEMENT AGREEMENT
PERSHING AUDITORIUM
LINCOLN, NEBRASKA**

THIS AGREEMENT, is made and entered into this 1st day of September, 2005, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation, under the laws of the State of Nebraska, and SMG, a Pennsylvania general partnership which is indirectly and jointly owned by Hyatt Hotels (FMG Partners) and ARAMARK Corporation (ARA Facilities Management, Inc.).

In consideration of the mutual benefits and conditions in this Agreement, the City and SMG agree as follows:

I. DEFINITIONS.

A. Advanced Sales Escrow Account shall mean a separate interest-bearing commercial bank account established by SMG on behalf of the City in the City of Lincoln, Nebraska, diverse from any other commercial bank accounts which SMG may have, which shall be for the deposit of money collected from advanced ticket sales for any event at the auditorium. Such money shall be held in trust for the outstanding ticket holders to cover refunds until the ticketed event takes place or is no longer subject to refund at which time SMG shall reconcile the account and any amounts related to such event shall be transferred to the SMG Operating Fund.

B. Advertising Materials shall include any signs, logos, pennants, banners, or other promotional materials and agreements especially including any advertising, endorsements, name placement, naming rights or other device attracting attention to any business or product offered for sale.

C. Advisory Committee shall mean the Pershing Auditorium Advisory Committee as originally established by the Lincoln City Council Resolution No. A-42136 and as the same may be amended from time to time.

D. Annual Operating Budget shall mean the document prepared by SMG in a form approved by the City's Contract Administrator corresponding to the City's fiscal year (which fiscal year commences on September 1 and ends on August 31), listing all projected revenues and Reimbursable Expenses by category for the appropriate fiscal year.

E. Auditorium shall mean the Pershing Municipal Auditorium located in Lincoln, Nebraska (Auditorium).

F. Cause for Disciplinary Action shall mean: Any action which reflects discredit upon the City or the Auditorium or is a direct hindrance to the effective performance of Auditorium functions. Cause for Disciplinary Action shall be considered good cause for disciplinary action which may be based upon causes and complaints other than those listed herein. Cause for Disciplinary Action may include an employee's:

1. Habitual use of intoxicating beverages to excess or the use of illegal narcotics.
2. Conviction of a felony or of a misdemeanor involving moral turpitude.
3. The use of intoxicating beverages or intoxication while on duty.
4. Offensive conduct or language toward the public or toward an SMG or city officer or Auditorium employee.
5. Insubordination or any conduct unbecoming to an SMG or City officer or Auditorium employee, either on or off duty.
6. Incompetence to perform the duties of the position.
7. Damage to or negligence in the care and handling of Auditorium or City property.
8. Violation of any lawful and reasonable regulation made or given by the employee's superior, where such violation or failure to obey amounts to an act of insubordination or a serious breach of proper discipline; or results, or might reasonably have been expected to result, in loss or injury to the Auditorium, or to the public.
9. Inducing or attempting to induce any SMG or City officer or Auditorium employee to commit an illegal act or to act in violation of any lawful and reasonable SMG, Auditorium or official regulation or order or participating therein.
10. Solicitation or receipt from any person, participation in any fee, gift, or other valuable thing that is given in the hope or expectation of receiving a favor or better treatment than that accorded other persons.
11. Use or attempted use of personal or political influence or bribery to secure an advantage in an examination or promotion, leave of absence, transfer, change of grade, pay, or character of work.
12. Failure to pay valid debts, thereby causing embarrassment to the Auditorium.
13. Absence from duty without leave, or failure to report after leave of absence has expired, or after such leave of absence has been disapproved or revoked and canceled.

G. City shall mean the City of Lincoln, Nebraska, a political subdivision in the State of Nebraska.

H. City's Contract Administrator shall mean the Finance Director of the City of Lincoln.

I. Concessions shall mean food and beverages, and other products or services including Event Related Items to be sold or offered for sale at the Auditorium.

J. Concessions Gross Revenue shall mean the total cash revenue net of sales taxes from the sale of Concessions.

K. Contract Year shall mean the period of time from and including September 1st through and including August 31st of each year corresponding to the City's fiscal year.

L. Event Related Items shall mean any items sold on "consignment," such as concert tee-shirts and other products, where the provider of the Concessions items or any other party receives a percentage of the selling price.

M. Equipment Fund shall mean a separate fund or sub-account, diverse from any other accounts in which SMG shall deposit therein two and one-half percent of gross concession sales.

N. Management Fee is defined in Section XV.

O. Marketing Fund shall mean a separate fund or sub-account, diverse from any other accounts in which SMG shall deposit therein the remaining balance of the original \$150,000 investment (i.e. \$59,375) and the sum of fifty thousand (\$50,000) and five percent of Concessions Gross Revenue. Funds on deposit in the Marketing Fund shall be used for the promotion or co-promotion of events at the Auditorium which are expected to generate a net profit. Any net promoter profit earned from such event shall be deposited in the Marketing Fund and any net promoter loss from such event shall be paid out of the Marketing Fund. The \$50,000 investment shall be amortized over a ten (10) year period.

P. Operating Revenues shall mean any and all revenues of every kind or nature derived from owning, operating, managing or promoting the Auditorium, including, but not limited to: license, lease and concession fees and rentals, revenues from merchandise sales, advertising sales, equipment rentals, utility revenues, box office revenues, parking revenues, Concession Gross Revenue, commissions or other revenues from decoration and set-up, security and other subcontractors (however, if such revenues are collected in the first instance by and retained by such subcontractors, the amount of such revenues paid by such contractors to the Auditorium shall be included as Operating Revenues), miscellaneous operating revenues, revenues generated from separate agreements with SMG affiliates pertaining to the Auditorium, and interest revenues, all as determined on a full accrual basis in accordance with generally accepted accounting principles. Solely for purposes of (i) identifying Operating Revenues which will be budgeted in approved budgets, (ii) calculating any Revenue Increase and any Fee Rebate pursuant to Sections XV (B) and (D) hereof, and (iii) determining amounts of Operating Revenues to be deposited by SMG into the SMG Operating Fund, Operating Revenues from all event activity at the Auditorium will be calculated to encompass the gross receipts from each such event, less allowances for contractual allowances including without limitation payments to promoters of such events and Event Related (or comparable) Items associated with such events.

Q. SMG Operating Fund shall mean a separate interest-bearing commercial bank account established by SMG on behalf of the City in the City of Lincoln, Nebraska, diverse from any other commercial bank accounts which SMG may have, which shall be for the exclusive use of all receipts and disbursements related to and as provided in this Agreement.

R. SMG shall mean SMG, a Pennsylvania general partnership which is indirectly and jointly owned by Hyatt Hotels (FMG Partners) and ARAMARK Corporation (ARA Facilities Management, Inc.) and shall include SMG Food & Beverage, LLC (SMGFB), a wholly owned subsidiary of SMG, where its interests may appear.

S. SMG's Concession Report shall mean the document prepared by SMG in a form approved by the City's Contract Administrator for Concession Gross Revenue. For calendar month 1, SMG shall complete the report 10 days prior to the first day of calendar month 3. Thereafter SMG shall complete the report 10 days prior to the first day of the succeeding calendar month.

T. Quarterly Operating Budget shall mean the document prepared by SMG in a form approved by the City's Contract Administrator for anticipated revenues and Reimbursable Expenses for the appropriate fiscal quarter.

U. Quarterly Statement shall mean the document prepared by SMG in a form approved by the City's Contract Administrator for showing the actual Reimbursable Expenses for the appropriate fiscal quarter.

V. Reimbursable Expenses are defined in Section XVI.

W. Transitional Operation shall mean the period of time, if any, SMG continues to perform duties under this agreement following the expiration or termination of this agreement.

II. INTENT.

A. The City owns and holds the Auditorium for the benefit of the citizens of the City of Lincoln.

B. The Auditorium is a significant asset and is an integral part of the City's efforts to provide services in the Public interest for the betterment of the community.

C. The Auditorium has operated with a significant historical deficit requiring outlays of public funds to subsidize its operations.

D. The Auditorium's overall usage and efficiency could be improved by an infusion of private resources including capital, management services, marketing services, entertainment services, administration services and procurement services.

E. SMG has extensive skill, expertise, and experience in management services, marketing services, entertainment services, administration services and procurement services and is willing to capitalize a Marketing Fund for added revenues gain.

F. The City desires to engage SMG to manage and operate the Auditorium and SMG desires to accept such engagement on the terms and conditions set forth in this Agreement.

III. GRANT TO SMG.

The City hereby grants to SMG and SMG hereby accepts the exclusive right to manage, market, promote, operate and maintain the Auditorium as provided in this Agreement.

IV. SMG'S RESPONSIBILITIES.

Commensurate with the relationship of the parties, SMG shall complete its responsibilities according to the highest standard of care with the utmost regard to the special relationship it enjoys with the City. SMG shall cooperate with the City and implement the City's recommendations and advice, consistent with the terms of this Agreement. SMG's specific responsibilities shall include such services as detailed in SMG's proposal, specifically including, without limitation, the following:

A. Marketing and Sales. SMG will provide all marketing and sales services and activities as follows:

1. Advocacy. SMG shall provide the Auditorium with a national advocate through SMG.

2. Marketing Department. SMG shall maintain a strong, in-house marketing department at the Auditorium.

3. Marketing Communications. SMG shall provide a specific tailored plan to advertise the Auditorium and its availability and features generally as well as specific events at the Auditorium. SMG shall provide professional public relations to position the Auditorium in the most favorable light both locally and nationally.

4. Concessions Sales and Marketing. SMG shall be responsible for the operating of all Concessions, with the approval of the City, including the sale of food and beverages at the Auditorium, including all aspects of ordering and purchasing of inventories and supplies, staffing of concession stands, etc. In any such purchasing it is understood that SMG maintains its own suppliers which may include local suppliers, (if local suppliers offer the same prices as the national suppliers, then the local supplier shall be utilized) but in any event may not be for the exclusive use or benefit of the Auditorium, and no such suppliers shall be deemed to have any contractual relationship to the City or the Auditorium, unless authorized by the City. Contracts with suppliers shall contain a provision acknowledging SMG is the contracting party and that SMG has no authority to bind the City to such contract. SMG shall also arrange and coordinate for Concessions sales of Event Related Items in the best interests of the Auditorium; Provided, that any associated rebate or other incentive to use such products or services shall be credited to the Auditorium. SMG shall provide point of sale or other marketing for Concessions at the auditorium. Five (5%) percent of the Concessions Gross Revenue shall placed in the Marketing Fund and another two and one half (2 1/2%) percent of Concessions Gross Revenue shall go into the Equipment Fund.

a. SMG shall be permitted to utilize SMG Food & Beverage, LLC ('SMGFB'), a wholly owned subsidiary of SMG, to maintain and continue hospitality beverage service under a properly issued Nebraska retail liquor license for the licensed premises and at the class level maintained by the previous management company at the Auditorium.

b. SMG agrees and represents that the use of SMGFB shall not (i) add to the cost of operating such services, (ii) reduce the revenues expected therefrom for the Auditorium, (iii) absolve SMG of responsibility under this Agreement for the operation of such hospitality beverage services, or (iv) permit SMGFB to separately employ persons in any capacity at the Auditorium. Accordingly (A) the expenses and revenues associated with such hospitality beverage service will be considered, respectively, Reimbursable Expenses and Operating Revenues under this agreement, subject to the terms and conditions of this agreement (including without limitation the approval of budgets pertaining thereto), and (B) the provisions of this agreement specifically including, insurance and indemnification shall be interpreted to include SMGFB as appropriate, including without limitation (1) adding SMGFB as a responsible party for the operation of such services under and in accordance with the terms of Section XXII hereof, (2) adding SMGFB as a named insured and as an additional insured on, respectively, the liability insurance and property and hazard insurance provided in this agreement, and (3) maintaining SMG as a responsible party for the operation of such services under and in accordance with the terms of Section XXII hereof.

5. Ticket Sales and Marketing. SMG will be responsible for all aspects of ticket sales and marketing for events and activities including the supervision of arrangements with computerized ticketing services. SMG's services shall include ordering, selling and accounting for tickets, reporting ticket revenues for a given event for each user of the Auditorium, cash and credit card processing, complete auditing and accounting for each event, and timely exchange of income less expenses at the end of each event in the traditional manner. SMG shall establish an Advanced Sales Escrow Account to be used for any advanced ticket sales money.

6. Promotions. SMG shall pursue an aggressive promotional campaign for the Auditorium in the best interest of the Auditorium.

7. Special Events Promotion. SMG shall provide promotional services as an ally of local and other promoters at the local and national level to guide entertainers and attractions to the auditorium. SMG or its subsidiaries or affiliates may promote or co-promote events as permitted in this agreement with the City's approval.

B. Programming. SMG shall provide professional services and coordinate with the City through the City's Contract Administrator to ensure that appropriate concerts, conventions, shows and other programs and activities are booked into the Auditorium and that suitable press coverage is obtained as follows:

1. Planning. SMG shall provide a professional event management planning and control system tailored to the routine handling of the event management requirements for each principal type of event at the auditorium. This system shall have the capability to produce hard copy, electronic or other reports in sufficient detail, subject to City approval, to provide accountability and proper record-keeping, including detailed reports at the City's request and in such forms as the City may reasonably require upon termination or expiration of this Agreement.

2. Booking and Promotions. SMG shall provide for all booking and scheduling of events at the Auditorium tailored to the specific needs of the City and the Auditorium including significant involvement of the City at critical decision points.

3. Scheduling. SMG shall maintain all schedules for events held at the Auditorium, and shall attempt to maximize the use of the Auditorium.

4. Existing Contracts. SMG shall comply with the terms and conditions of all outstanding contracts impacting the Auditorium.

5. Advisory Committee. SMG shall cooperate and provide information as may be reasonably requested by the Advisory Committee in its advisory function to the City and the City's Contract Administrator as it relates to the successful operation of events at the auditorium. This shall include a written report and attendance by the corporate officials at quarterly Advisory Board meetings.

C. Operations Management. SMG shall provide personnel, administrative, mechanical, and custodial administration and maintenance as follows:

1. Personnel. SMG shall provide complete staffing according to a clearly defined organizational structure to ensure maximum utilization of each employee's skills.

2. Administrative Oversight and Support. SMG shall provide the Executive Director with support services from SMG's Corporate offices in Philadelphia, PA including:

a. Purchasing -- utilizing SMG's volume national network for purchases; unless it can be purchased locally for the same amount;

b. Legal services administration;

c. Labor relations;

d. Capital planning;

e. Issue analysis including the Americans with Disabilities Act;

f. Executive recruitment;

g. Training; and

h. Risk management.

3. Operational Services. SMG will be responsible for all services required to stage (set up and tear down) the Auditorium for each event, including but not limited to services involving the exhibition and stage areas, sound system, lighting system, stage rigging, dressing area, stage equipment and loading in and loading out. SMG will be responsible for providing all management staff, ticket sales personnel, ushers and other personnel required for the operation of the Auditorium, including but not limited to ticket taking, program distributions and assistance to patrons generally, including persons with disabilities.

4. Mechanical Maintenance. SMG will be responsible for the performance of minor facilities maintenance work, as provided in the quarterly budget. Any major repairs in excess of \$5,000 per item shall be financed by the city from sources other than the SMG Operating Fund as a Capital Improvement unless otherwise agreed in writing by the parties. SMG's maintenance services shall include:

- a. Equipment Maintenance. SMG shall provide a comprehensive preventative maintenance system which guarantees the efficient operation and maintenance of heating ventilating and air conditioning power and other equipment at the facility utilizing a work order system.
- b. Energy Management. SMG shall maintain the system to monitor utility costs and develop an energy conservation plan setting forth procedures for use of equipment that minimizes energy use.
- c. Landscape and Perimeter Management. SMG shall provide a system to monitor and maintain the lawn, landscape and other exterior improvements around the premises in a neat and presentable fashion. (See Section VIII(B)).
5. Janitorial Services. SMG will be responsible for all routine cleaning and janitorial services at the Auditorium.
6. Trash Removal. SMG will be responsible for arranging for and coordinating all trash removal services.
7. Pest Control. SMG shall be responsible for all necessary pest control services, which will be performed by outside services subject to SMG's review.
8. Financial and Accounting Systems. SMG shall form an on-site office to provide for handling routine and special financial and accounting functions including:
 - a. Financial Reporting; (at least quarterly to be shown on an accrual basis)
 - b. Budgets;
 - c. Financial Controls;
 - d. Payroll and Tax Reporting;
 - e. Contract Management;
 - f. Claims, Insurance and Risk Management; and
 - g. Financial Reports required to fulfill obligations of SMG to provide reports to the City.
9. Revenues. SMG shall establish the SMG Operating Fund as soon as practicable after execution of this agreement. SMG will be responsible for the collection of all revenues generated by the Auditorium, which shall be deposited in the SMG Operating Fund. SMG is authorized to make disbursements from the SMG Operating Fund to pay Reimbursable Expenses and to pay promoters or performers in any amount due the performer or promoter as per contracts with them. Revenues collected by SMG and deposited in the SMG Operating Fund will be held in trust for the City and used in the manner hereinafter provided.
10. Licenses and Permits. SMG will obtain and maintain all licenses and permit necessary for SMG to manage and operate the Auditorium, including specifically any liquor licenses. Lapse, revocation, suspension or termination of any such permit or license for any reason other than as a result of the City's failure to cooperate as provided in the last sentence of this paragraph shall constitute adequate grounds for immediate termination by the City. The City shall cooperate with SMG to obtain, maintain, or renew any such licenses and permits.

11. Security. SMG will arrange, through local police, local contract security, building security, or other sources for all security services for events at the Auditorium and for general security when events are not in progress. SMG shall not permit alcohol sales except under its own retail liquor license or through special designated licenses issued to the holder of a Nebraska retail liquor license.

D. Transitional Operation. SMG shall cooperate with the City and any subsequent firm (including the City) in maintaining and transferring service responsibility. Unless otherwise agreed in writing between the parties, SMG shall continue to be bound by all the terms, conditions, and obligations of this agreement during any Transitional Operation. Transitional Operation shall not extend for more than 90 days unless otherwise agreed in writing between the parties. SMG may take reasonable precautions during the Transitional Operation to secure against unwarranted disclosure or use of any proprietary information of SMG, including without limitation any manuals and software programs of SMG, to or by the City or any subsequent management firm.

V. AUDITORIUM TO REMAIN OPEN.

The City hereby represents and warrants to SMG that the Auditorium will be permitted to be open to the paying public on a daily basis in a manner consistent with past practices.

VI. POWERS RESERVED TO THE CITY.

A. The City shall have, and hereby reserves the right of approval over the matters provided herein. The City's right of approval shall include the review and recommendation of the Advisory Committee as to the following matters:

1. The kind, quality and prices of events and concessions as suggested by SMG from time to time;
2. The rent structure and other fees and charges to Auditorium users, as suggested by SMG from time to time based on market conditions or other pertinent factors;
3. SMG's Annual and Quarterly Operating Budget as hereinafter defined including any transfers or carryover of unexpended balances for any class or category during the interim between formal budget approvals;
4. Any Advertising Materials;
5. Ticket sales and ticket marketing policies -- Such approval specifically includes any proposed user fees or other negotiated items related to ticket sales;
6. Concession sales and concession marketing policies including Event Related Items and other items;
7. Events to be promoted or co-promoted with the Marketing Fund as recommended by SMG from time to time;

8. The person appointed or selected by SMG as the General Manager or Executive Director of the auditorium. The Advisory Committee shall make recommendations to the City with respect to the appointment of such person;
9. Rental Charges and any other fees or remuneration for the use of the Auditorium premises;
10. Naming Rights; and
11. All approvals of the City shall be given through the City's Contract Administrator, except for budget approvals which must be acted on by the City Council.

B. The City shall be authorized, at any time, to obtain information and records from any bank concerning any accounts established by SMG on behalf of the City pursuant to this agreement and to inspect the same.

C. This reservation expressly limits SMG's authorities to those granted in this agreement and those necessarily implied thereby, and in no event shall implicit authority control over the wishes of the City in any manner.

VII. RELATIONSHIP OF PARTIES.

A. In consideration of SMG's substantial professional skill, expertise, and experience and the fiduciary and other obligations undertaken by SMG under this agreement, the City reposes special confidence in SMG to conform to the highest professional standards in all matters related to this agreement.

B. SMG agrees that it will provide such specialized professional services at the highest standard and quality of care, acknowledging that its fiduciary and other obligations under this agreement necessarily create a special relationship of trust and fidelity with the City.

C. SMG has limited authority to act as the representative of the Auditorium in carrying out its obligations under this Agreement, but has no authority to bind the City, unless authorized by the City in writing.

D. All deposits made to the funds or accounts which may be established under this agreement are the property of the City and the City assumes all tax liability, if any, associated with interest earnings on such accounts. To that end all such funds and accounts will be established in the name of the City of Lincoln d/b/a Pershing Auditorium, using the city's federal/state tax registration numbers. SMG has been empowered by the city solely to manage such funds on behalf of the city. SMG may control deposits/disbursements solely as authorized in this agreement.

E. The parties agree that each of them is acting on its own behalf and not as an employee, joint venturer or partner of the other. Each party is interested only in the results obtained from this agreement and each party shall be in exclusive charge and control of its own performance according to its own means and methods. Nothing in this agreement shall be interpreted as creating a partnership, joint venture or relationship of principal and agent between the parties.

VIII. BEST EFFORTS.

A. Consistent with the relationship of the parties under this Agreement, SMG and the City shall at all times and in all respects use their best efforts to maintain an efficient and first quality operation at the Auditorium.

B. Unless otherwise agreed between the parties, during the term of this agreement and except as may otherwise be provided in Section IV(C)(4)(c) hereof, the City will provide services in respect of the Auditorium operations and grounds which are consistent with past practice.

C. Each party agrees that it shall not unreasonably withhold agreement, consent or approvals provided for or otherwise required in this agreement. Each party agrees that it will timely and in good faith negotiate, complete, and execute the necessary documents or instruments to provide for the same.

IX. TERM.

The term of this Agreement shall commence on September 1, 2005 and shall continue for a period of four years through August 31, 2009. In the event this Agreement is not canceled by the City by notifying SMG in writing of such election prior to 180 days prior to August 31, 2009, the term of this agreement shall extend for an additional 4 year period.

X. RIGHT OF CANCELLATION.

The City will retain the right to cancel the Agreement at its sole option, upon one hundred eighty (180) days prior written notice to SMG.

XI. COMPETITION PROTECTED AREA.

A. SMG agrees to completely refrain from entering into any management agreement with any owner or operator of any competitive auditorium or similar competitive entertainment facility within 75 miles of Lincoln and specifically including any such facility in or about the towns of Omaha, Nebraska, the Omaha Civic Center and MECA, excluding the Mid-America Recreation and Convention Complex in Council Bluffs, Iowa.

B. This section shall not be construed to prohibit SMG from operating any food or beverage operations or other support services that do not involve marketing or management of bookings at such competing facilities.

C. The City may, in its sole discretion, consent in writing to a competitive operation otherwise restricted under this agreement.

XII. BUDGETS AND REPORTS.

A. SMG shall, no later than the first Friday in March of each year, submit to the City the Annual Operating Budget for the coming fiscal year of the City,

B. The Annual Operating Budget shall be approved by SMG and the City by August 31st of the year submitted.

C. SMG and the City may revise the Annual Operating Budget at any time by mutual written agreement.

D. Not later than fifteen (15) days prior to the beginning of each fiscal quarter under this agreement during the term hereof, SMG shall submit to the City its Quarterly Budget for the coming fiscal quarter, which shall be approved by the City and SMG within fifteen (15) days and be generally consistent with the Annual Operating Budget.

E. The budget shall contain a line items for travel to conferences and seminars and separately itemize corporate travel for training or other purposes.

XIII. INTENTIONALLY OMITTED.

XIV. COMPENSATION TO SMG.

A. SMG's compensation under this Agreement shall consist of the Management Fee described below.

B. In the event the City determines in its sole discretion to issue tax exempt obligations related to the Auditorium, SMG shall not be compensated (in whole or in part) on the basis of a share of net profits of the Auditorium pursuant to the Tax Reform Act of 1986, § 1301 (e), as the same may be amended.

XV. THE MANAGEMENT FEE.

The Management Fee shall consist of the Fixed Fee and Incentive Fee as described below. To the extent that any Contract Year under this Agreement is less than 12 months, the Fixed Fee and Incentive Fee shall be prorated to reflect the number of days in such contract year.

A. **Fixed Fee.** As base compensation to SMG for providing the services herein specified during the Management Term, the City shall pay an annual fixed fee of \$100,000, which amount shall be adjusted upward on the first day of each Contract Year, during the term hereof by the percentage change in the Consumer Price Index - All Urban Consumers (CPI-U) Lincoln, Nebraska, MSA Average, all items, during the one year period immediately preceding such Contract Year, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or of any revised or successor index. The Fixed Fee annual adjustment is capped at five (5) percent annually. The Fixed Fee shall be payable in equal monthly installments due on the first day of each month during such Contract Year, and SMG shall be entitled to draw such amounts from the account described in Section XVII. The initial Management Fee to be paid by the City to SMG shall be \$8,833 per month beginning September 1, 2005;

B. **Incentive Fee.** In addition to the Fixed Fee, and beginning at the end of Contract Year 1 and for each year thereafter during the Term, SMG shall receive twenty percent of the annual improvement in the actual net operating income (i.e. Operating Revenue less Reimbursable Expenses (as defined in Section XVI)) over the approved, budgeted net operating income. In the event the City determines to issue tax-exempt obligations related to the Auditorium, the provisions of XXVIII (B) shall apply.

C. **Payment.** The incentive fee determined pursuant to Section XV(B) shall be payable to SMG within 30 days after the City's receipt of an invoice from SMG accompanied by the annual statement certified by one of its officers setting forth the Operating Revenues and Reimbursable Expenses for the Contract Year for which incentive fees are payable and showing the calculation of the incentive fee payable with respect to such Contract Year, described in Section XV(B). To the extent that the Agreement terminates during any Contract Year, the calculation of the incentive fee shall be prorated to take account of the partial Contract Year for which the Agreement was in effect.

XVI. REIMBURSABLE EXPENSES.

A. The City shall pay to SMG Reimbursable Expenses as provided in this section in addition to any Management Fees including expenses incurred by SMG in the provision of services authorized in this Agreement and as approved by the City in the Quarterly and Annual Budgets.

B. Reimbursable Expenses shall generally include the following:

1. Staff Labor including benefits as provided in this agreement.
2. General and Administrative Expenses including:
 - a. Postage;
 - b. Office supplies;
 - c. Copies and printing;
 - d. Dues and membership;
 - e. Subscriptions;
 - f. Telephone;

- g. Travel and entertainment;
 - h. Advertising;
 - i. Office equipment and repair, and
 - j. Miscellaneous expenses reasonably or necessarily incurred by SMG with prior approval by the City.
3. Operational Expenses including:
- a. Utilities;
 - b. Supplies;
 - c. Uniforms/cleaning;
 - d. Insurance;
 - e. Building repair and maintenance;
 - f. Maintenance contracts;
 - g. Contract services;
 - h. HVAC repair and maintenance;
 - i. Vehicle costs for operations;
 - j. Equipment rental; and
 - k. Other Miscellaneous expenses reasonably or necessarily incurred by SMG with prior approval by the City.

XVII. CONSIDERATION, PAYMENT, FUNDS.

A. Funding. On the first day of each month the City agrees to pay sufficient sums into the SMG Operating Fund to enable the fund to provide for:

- 1. The Management Fee payable with respect to the prior calendar month payable according to SMG's Report; and
- 2. A subsidy in the amount that the estimated Reimbursable Expenses for such month exceed the budgeted revenues (excluding SMG's Management Fee) for such month as approved in the Quarterly Budget plus any then existing balance in the SMG Operating Fund.

B. Withdrawals. SMG will not make any withdrawals from the SMG Operating Fund to the extent that such withdrawal(s) will result in the aggregate expenditure of funds during the normal course of business in excess of the cumulative pro-rata Reimbursable Expenses on a monthly basis as provided in the Annual Operating Budget approved by the parties, plus sufficient amounts to adequately fund the Marketing Fund and Equipment Fund as provided in this Agreement, unless SMG receives the prior written approval of the City for such expenditure of funds.

C. Quarterly Statement. Within fifteen (15) days after the end of each quarter, SMG shall submit to the City's Contract Administrator a Quarterly Statement showing the actual Reimbursable Expenses for such quarter. If the SMG Operating Fund is insufficient to cover the actual Reimbursable Expenses plus the Management Fee due during such quarter, then the City shall deposit a sum in the amount of the deficiency into the SMG Operating Fund not later than ten working days after the City's receipt of the Quarterly Statement.

D. Marketing Fund. Not later than thirty days after execution of this Agreement, SMG deposit within the Marketing Fund the remaining balance of the original \$150,000 investment and the \$50,000 investment, each as referenced in Section I(O) above. In the unlikely event that the net loss from any such event exceeds the balance in the Marketing Fund, the excess shall be a Reimbursable Expense under this Agreement. Thereafter, the Marketing Fund shall be funded in a manner mutually agreeable to both parties after assessment on a case-by-case basis. The fifty thousand dollars investment shall be amortized over a ten (10) year period. In the event of the expiration or termination of this Agreement, the City shall pay, or cause any successor management company to pay, to SMG unconditionally and without set-off the unamortized amount of such fifty thousand dollars existing as of such expiration or termination. The payment of any such unamortized amounts shall be made to SMG no later than thirty (30) days following the effective date of such expiration or termination.

XVIII. ACCOUNTING RECORD, REPORTS AND PRACTICES.

A. SMG shall maintain accounting records relating to the Auditorium using accounting practices which conform to generally accepted accounting principles.

B. SMG shall maintain internal financial control policies and practices which are in accordance with generally accepted standards in the industry.

C. The City shall have unlimited access to all accounting records and supporting documentation of SMG relating to the Auditorium during the term of this Agreement and for a period of one (1) year thereafter. Such right to access shall be exercised in a reasonable manner.

D. Each Contract Year the accounts of the Auditorium shall be internally audited by SMG. The City may request an independent review of the statements by an independent auditing firm selected by the city and approved by SMG. SMG shall be responsible for the cost of the audit in the event the independent audit identifies a material discrepancy. Otherwise the cost of the independent audit, if any, shall be treated as a Reimbursable Expense.

XIX. PURCHASING REQUIREMENTS.

A. The City and SMG shall comply with all purchasing requirements for purchases obligating the City including competitive bidding for all purchases obligating the City in the amount of \$10,000 or more or for any contract committing the City to an expenditure of \$10,000 or more as required by Lincoln City Charter Art. 7 §2.

B. For purposes of this section remuneration to SMG on a cost basis shall not be considered purchases obligating the City.

XX. TERMINATION PROVISIONS.

A. Upon termination for any reason including cancellation, the City shall pay SMG its Management Fees, and Reimbursable Expenses up to the date of termination and the amounts due under Section XVII D, if any.

B. SMG has the right to terminate this agreement if the City fails to perform as required in this agreement after SMG notifies the City of the failure to perform in writing giving a reasonable time to cure the same (not to exceed 60 days). After such notice and opportunity to cure, SMG may exercise termination rights without further notice.

C. Upon expiration or termination the City agrees to require any succeeding management contract to contain a provision requiring the succeeding management firm to succeed to the rights and obligations of SMG under, and comply with the terms and conditions of, all outstanding contracts impacting the Auditorium. In the event the city does not hire or contract for a succeeding management firm, then the City shall succeed to the rights and obligations of SMG under, and comply with the terms and conditions of, all outstanding contracts impacting the Auditorium.

XXI. INSURANCE.

A. In connection with the employment of its employees, SMG shall pay all applicable social security, unemployment, worker's compensation or other employment taxes or contributions of insurance, and shall comply with all federal and state laws and regulations relating to employment generally, minimum wages, social security, unemployment insurance and worker's compensation. SMG shall indemnify and hold harmless the city from all costs, expenses, claims or damages resulting from any failure of SMG to comply with this subparagraph.

B. Subject to Section XXI(E), the City shall procure and maintain liability insurance against any damage, loss or liability arising or claimed to have arisen from the use or occupancy of the auditorium, including the operations of SMG at the Auditorium, and shall name SMG, its officers, directors, employees and affiliates as named insureds as their respective interests may appear. The cost of providing such liability insurance shall be a Reimbursable Expense to the extent charged to the accounts or funds of the Auditorium. The amounts of such coverages shall be as follows:

1. For bodily injury or damages, fatal or non-fatal, including product liability, liquor liability and automobile liability coverage, to any one person to the extent of \$1,000,000.

2. For bodily injury or damages, fatal or non-fatal, including product liability, liquor liability and automobile liability insurance coverage, to two or more persons for any one accident to the extent of \$2,000,000.
3. For property damage to the extent of \$100,000 each occurrence, \$100,000 aggregate.
4. 'Umbrella' or Excess Coverage in the amount of \$5,000,000.

C. Subject to Section XXI(E), the City shall procure and maintain at replacement value for the Auditorium improvements and contents insurance against loss by fire, lightning, and other perils covered by the standard all-risk endorsement, and shall maintain insurance against such other hazards and in such amount as is customarily carried by owners and operators of similar properties and naming SMG, its officers, directors, employees and affiliates as additional insureds as their respective interests may appear. The cost of providing such property insurance shall be a Reimbursable Expense to the extent charged to the accounts or funds of the Auditorium. It is understood and agreed that SMG has obtained and maintains its own insurance coverage for any personal or other property of SMG that SMG has determined is outside the contents and property coverages obtained by the City, and it is SMG's sole responsibility to obtain coverage, if any, at SMG's own cost and expense (and not as a Reimbursable Expense) for such additional property coverage.

D. The City shall deliver to SMG certificates or other evidence as reasonably requested by SMG to establish that the insurance required above remains in full force and effect. Any failure to maintain the insurance coverages required hereby shall be a condition of breach under this Agreement.

E. SMG shall have the option, but not the obligation at any time during the term of this Agreement, to elect to obtain the insurance coverage set forth above, at a cost to the City of not more than 95% of the premiums then being paid by the City to provide such coverage. If SMG so elects to obtain such coverage, SMG shall invoice the City monthly for such costs, and such invoices shall be deemed Reimbursable Expenses for all purposes of this Agreement.

F. SMG and the City expressly waive all rights and claims they may have against the other, their subsidiaries and affiliates for loss or damage arising or resulting from the operations at the Auditorium caused by fire or other perils normally covered in a standard form fire or all risk insurance policy, including without limitation business interruption and extra expenses. Each insurance policy procured by SMG and the City shall affirmatively state that it will not be invalidated because the insured waived its rights of recovery against any party prior to the occurrence of a loss.

G. SMG shall administer, defend, process and otherwise handle all claims up to the deductible or self insured retainer amount of any such policy or coverage obtained under this agreement; provided that for any insurance coverage obtained by the City, the deductible or self insured retainer for such policy or policies shall not exceed \$1,500. Payment of any claim up to the amount of the deductible or self insured retainer shall be considered a Reimbursable Expense under this agreement.

H. SMG shall require suitable and adequate insurance coverage commensurate with the coverages required herein for every contracted event at the auditorium, including spectator and participant liability. The amounts and coverages of such insurance shall be subject to the City's Contract Administrator approval, including SMG's standard contract provisions for insurance coverage for contracted events.

XXII. INDEMNIFICATION.

A. Each party agrees that it will be responsible for its own acts and omissions and the results of its own acts and omissions, and shall not be responsible for the acts or omissions of the other party. Each party agrees to assume all risk and liability for any injury to persons or property resulting in any manner from each party's own acts or omissions related to this agreement, including acts or omissions by each party's own agents or employees related to this agreement. Liability includes any claims, damages, losses, and expenses (including attorneys' fees) arising out of or resulting from performance of this agreement, that results in any Claim for damage whatsoever, including any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any resulting loss of use, collectively "Losses."

B. Notwithstanding the provisions of Section XXII(A) above and to the extent such Losses do not arise out of any negligent or wrongful act or omission attributable to SMG, SMG shall have no obligation to indemnify the City, or otherwise be responsible to the City, for any Losses to the extent that such Losses arise out of:

1. a failure or alleged failure to comply with all applicable laws, regulations or ordinances, including, but limited to, the Americans with Disabilities Act, 42 U.S.C. Sections 12101-12213 as amended by the Civil Rights Act of 1991 (42 U.S.C. Section 1981(a)), as it now exists and as it may be amended in the future by statute or judicial interpretation (collectively, the "ADA") outside the scope of SMG's management and control under this agreement, including such failures arising at any time prior to the commencement of the term hereunder relating to the operation of the Auditorium and such failures at any time prior to, as of, or after the commencement of the term hereunder relating to Capital Improvements as provided for in Section IV(C)(4);

2. any condition on, above, beneath or arising from the premises occupied by the Auditorium which might, under any such law, give rise to liability or which would or may require any "response," "removal" or "remedial action" (as such terms are defined under the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act);

3. any structural defect or unsound operating condition with respect to the Capital Improvements as provided for in Section IV(C)(4) or the premises occupied by the Auditorium prior to, as of or after the commencement of the term hereunder;

4. any services provided by architects, engineers, or other agents (other than SMG) under separate contract with the City in connection with capital or other improvements to the Auditorium; or

C. Notwithstanding the provisions of Section XXII(A) above the City and SMG shall have no obligation to indemnify, or otherwise be responsible to the other party, for any

Losses to the extent that such Losses are covered by the commercial insurance provided under Section XXI of this agreement.

XXIII. STRUCTURAL ALTERATIONS.

SMG shall not make and changes or modifications to the structure of the Auditorium without the prior written authorization of the City. It is understood and agreed that the Advisory Committee shall study and review requests for such changes making appropriate recommendations to the City.

XXIV. DESTRUCTION OF THE AUDITORIUM.

In the event that the Auditorium or any part of the Auditorium shall be destroyed by fire, explosion or other casualty so that all or a substantial portion of the Auditorium cannot be operated, and the City fails to rebuild, repair and reopen the same for business within 180 days after the happening of said fire or other casualty, then and in said event, either SMG or the City shall have the right (but no obligation to do so) to terminate this Management Agreement, in which event the parties shall comply with and pay the sums referred to in Sections XVII(D)(4), XVII(E), and XX(C) hereof.

XXV. EMPLOYEES.

A. Except as provided in Section IV(C)(1), all persons engaged at the Auditorium in operating any of the services under this agreement shall be the sole and exclusive employees of SMG and shall be paid by SMG.

B. SMG will employ trained and neatly uniformed employees and said employees shall conduct themselves at all times in a proper and respectful manner. Any dismissal shall be in accordance with the proposal (1) as applicable or SMG's corporate policy and with any applicable federal, state or local laws which may be in effect and, further, shall be in compliance with any applicable union or labor organizational agreements which may be in effect at the time of said dismissal.

C. During the period commencing on the date hereof and ending one (1) year after the termination of this Agreement, except with SMG's prior written consent which will not be unreasonably withheld, the City will not, for any reason, solicit for employment, or hire, any of the senior management personnel employed by SMG at the Facility, including, without limitation, the general manager and director-level employees. In addition to any other remedies that SMG may have, specific performance in the form of injunctive relief shall be available for the enforcement of this provision

XXVI. CONFLICT OF INTEREST.

A. SMG warrants that it has not employed or retained any person or company other than a bona fide employee or legal counsel working for SMG to solicit or secure this agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee or legal counsel working for SMG, any fee, commission,

percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the execution of this agreement. For breach of this warranty the City shall have the right to annul or void this contract without liability or, in its discretion, to deduct from any fees due SMG under this agreement the full amount of any such fees or other consideration.

B. SMG shall not subject the employees of the Auditorium as of September 1, 2005 to a non-compete clause. For newly hired employees, SMG may subject only the top 2 management employees (the Executive Director and Assistant Director under the current organization chart) to non-compete clauses if such employees are newly hired after November 1, 2005.

C. If SMG anticipates the use of related companies including subsidiaries or subdivisions not legally bound by the terms of this agreement in subcontracting for completing the terms and conditions of this agreement, SMG shall notify the City's Contract Administrator in writing and obtain the City's prior approval. A summary of amounts paid to related parties under this contract shall be submitted to the city at the end of each Contract Year. Any subcontracts with such related parties shall contain a provision making the related parties obligated to comply with the provisions of this agreement.

D. Promotion and Co-Promotion. The City understands that SMG or its affiliated entities are in the business of promoting events at locations similar to the auditorium. In the event SMG or an SMG affiliated entity desires to utilize the auditorium for promotion of an event, it shall be subject to the specific approval of the City's Contract Administrator. SMG agrees that the rental of the Auditorium for such events will be on the same basis as for other tenants or promoters presenting similar events.

XXVII. ASSIGNMENT OR DELEGATION.

A. This Agreement, or any part hereof, including the obligation to perform services under this agreement shall not be assigned by SMG directly or as the result of any merger, consolidation, sale, transfer of assets, or otherwise to any other person, firm or corporation without the express written consent of the City. The parties acknowledge that the foregoing does not preclude the assignment by SMG of its rights to receive its Management Fees hereunder as collateral security for SMG's obligations under any commercially reasonable credit agreement, provided that such collateral assignment shall not in any event involve SMG's rights and obligations to manage, promote or operate the Auditorium hereunder nor reduce, condition, or restrict in any way SMG's rights or capacity under this Agreement.

B. Violation of this provision shall be grounds for immediate termination by the City.

C. In the event the City grants its consent to such assignment, SMG shall not be relieved of any of its obligations or responsibilities under this agreement.

XXVIII. COMPLIANCE WITH LAWS.

A. General. SMG shall comply with all federal, state and local ordinances, statutes, rules and regulations as they relate to SMG, its agents and employees or the operation of the Auditorium. Nothing in this Section XXVIII or elsewhere in this agreement shall, however, require SMG to undertake any of the foregoing compliance activity, nor shall SMG have any liability under this agreement therefor, if such activity requires any Capital Improvements as provided for in Section IV(C)(4) unless the City provides funds for such capital improvements as provided in this agreement. Furthermore, SMG shall have the right to require any licensee, lessee, tenant, promoter or user of any portion of the Auditorium to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Auditorium.

B. Bonds. SMG understands and acknowledges that the Auditorium was and may in the future be renovated and improved using financing from Municipal General Obligation and other bonds issued by the City, the interest on which is exempt from taxation by the federal government. Accordingly, SMG agrees that it will, upon notice by the City or its Bond Counsel, modify this agreement or change any actions to be taken under this agreement which would without such modifications or changes result in such bonds becoming 'private activity bonds' or otherwise cause the interest on such bonds to become subject to federal income taxes. SMG specifically warrants and agrees that the Auditorium shall remain open to the general public according to past practices. Upon prior written advice and direction from the City or its Bond Counsel relating to any applicable provisions of law including the Internal Revenue Code and Tax Reform Act of 1986 as the same may be amended, SMG will not enter into any agreements of any kind to provide for the exclusive use of the Auditorium.

XXIX. NON-WAIVER.

The failure of either party at any time to enforce a provision of this Management Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Management Agreement or any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

XXX. AMENDMENT.

The parties may amend this Management Agreement only by written agreement executed by the parties.

XXXI. CHOICE OF LAW.

The laws of the State of Nebraska shall govern the rights and obligations of the parties under this Management Agreement.

XXXII. SEVERABILITY.

Any provision of this Management Agreement decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of this Management Agreement.

XXXIII. NOTICES.

All notices required by this Management Agreement shall be in writing and shall be sufficiently given and served upon the other party if sent by registered or certified United States mail, postage prepaid, and addressed as follows:

IF SENT TO THE CITY:

Finance Director
City of Lincoln, Nebraska
555 South 10th Street
Lincoln, Nebraska 68508

With a copy to:

City Clerk
City of Lincoln, Nebraska
555 South 10th Street
Lincoln, Nebraska 68508

Or at such other place as the City may, from time to time designate by notice to SMG.

IF SENT TO SMG:

SMG
701 Market Street
Philadelphia, PA 19106
Attn: President

With a copy to:

Stradley, Ronon, Stevens & Young
2600 One Commerce Square
Philadelphia, PA 19103
Attn: William R. Sasso, Esq.
Or Steven A. Scolari, Esq.

Or such other place as SMG may from time to time designate by notice to the City.

XXXIV. FORCE MAJEURE.

A. Except as otherwise provided, neither party shall be obligated to perform under this agreement, and neither shall be deemed to be in default, if performance is prevented by fire, earthquake, flood, act of God, riot, civil commotion or other matter or condition of like nature, including the unavailability of sufficient fuel or energy to operate the Auditorium, or any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic controls, riot, hostilities, war or governmental law and regulations.

B. In the event of a labor dispute which results in a strike, picket or boycott affecting the Auditorium or the services described in this Management Agreement, SMG shall not be deemed to be in default or to have breached any part of this Agreement.

XXXV. INTEGRATION.

A. This Management Agreement and all appendices and amendments hereto embody the entire agreement of the parties relating to the services to be provided under this agreement; provided that the City's Request for Proposal Documents and SMG's Proposal in response thereto are hereby incorporated except as to provisions of this agreement that actually conflict with provisions contained in such documents, whereupon this agreement shall control. Without limiting the foregoing, the provisions of Article XXII of this agreement shall supersede the indemnification provisions contained in such Request For Proposal Documents.

B. There are no promises, terms, conditions or obligations other than those contained herein, and this Management Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties hereto.

XXXVI. NON-DISCRIMINATION.

SMG shall not discriminate against any person because of race, color, sex, creed, religion, ancestry, national origin, age, marital status or disability, to fail or refuse to hire, or discharge, an employee, or to accord adverse, unlawful, or unequal treatment to any person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any other term or condition of employment pursuant to the requirements of Lincoln Municipal Code Chapter 11.08 and Neb. Rev. Stat. § 48-1122 (Reissue 1998 as amended).

IN WITNESS WHEREOF, the parties hereto have caused this Management Agreement to be executed on the day and year first above written. The undersigned by his signature expressly represents that he has the authority to bind the parties to the provisions of this agreement. As evidence of authenticity and capacity, SMG has submitted to the City the attached officer's certificate which is hereby incorporated into this agreement.

EXECUTION BY THE CITY OF LINCOLN, NEBRASKA

ATTEST:

CITY OF LINCOLN, NEBRASKA

City Clerk

Mayor

Approved by Executive or No. _____

dated _____

EXECUTION BY CONTRACTOR

IF A CORPORATION:

ATTEST:

Secretary (SEAL)

SMG
Name of Corporation

701 MARKET ST.
(Address)
Philadelphia, PA. 19106

By: John F. B.
Duly Authorized Official

Chief Financial Officer
Legal Title of Official